

State of California
California Regional Water Quality Control Board
Santa Ana Region
Staff Report
June 29, 2007

ITEM: * 14

SUBJECT: Order No. R8-2007-0048 Affirming the Action Taken by the Board on November 19, 1999 with Respect to Administrative Civil Liability Complaint No. R8-1999-0085, Memo & Rafaela Arauz, dba Arauz Trucking Company, Mira Loma, Riverside County

BACKGROUND

On October 26, 1999, the Executive Officer issued Administrative Civil Liability Complaint (ACL Complaint) No. R8-1999-0085 to Memo & Rafaela Arauz (Arauz) for violations of the California Water Code Section 13260 for discharging manure in the Mead Valley area of Riverside County without regulatory approvals. In the ACL Complaint (attached), the Executive Officer proposed an assessment of \$75,000 for the alleged violations. On November 19, 1999, the Board conducted a public hearing on the matter. After consideration of the evidence in this matter, including a staff recommendation that the assessment be increased to \$99,000, the Board assessed \$99,000 for these violations but did not issue a separate order. Subsequently, Arauz filed a petition with the State Water Resources Control Board (State Board). On March 8, 2000, the State Board dismissed the petition.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to adopt Order No. R8-2007-0048 affirming the action taken by the Board on November 19, 1999 regarding administrative civil liability complaint against Arauz.

DISCUSSION

On December 21, 1994, Rafaela Arauz of Arauz Trucking was notified by certified mail, article number Z 773 131 817, of the responsibility and liability of manure haulers for the disposal of manure to land, pursuant to Water Code Section 13260. Rafaela Arauz was notified that any person discharging manure to land after receipt of that notification is subject to the issuance of a civil liability complaint, in accordance with Water Code Section 13261. Therefore, Arauz was fully aware of the requirement to file a report of waste discharge under Section 13260 of the Water Code. Arauz deliberately and intentionally continued his illegal discharge operations.

The Executive Officer issued two Cleanup and Abatement Orders (95-15 and 95-16) to Arauz to cleanup illegally discharged manure from two locations. Arauz

removed the manure from one of those two locations and the manure could not be removed from the second location due to degradation and overgrowth.

During October 1999, Board staff investigated and determined that once again Arauz had illegally disposed of approximately 1,500 tons of manure at a 2.5 acre property located at 22260 Kinney Street in the Mead Valley area of Riverside County. This discharge was in violation of Water Code Section 13260, which states that any person discharging waste, or proposing to discharge waste, is required to submit a report of waste discharge to the Regional Board. Any person failing to submit such report of waste discharge is subject to administrative civil liability action in accordance with Water Code Section 13261. The Executive Officer issued the ACL for violations of Section 13260 of the Water Code. At the November 19, 1999 Board meeting, the Board considered the ACL, including the factors specified under Section 13327, and assessed a civil liability of \$99,000. Although the Board did not adopt a separate order memorializing this action, the meeting minutes (attached, see Item 12) and the verbatim transcript of the hearing document the assessment of this liability.

The Board assessed \$99,000 and suspended \$50,000 of that amount with a provision that the manure be removed from the illegal disposal site by December 1, 1999. Arauz did not remove the manure from the site and therefore owes the entire \$99,000.

On January 25, 2000, the Executive Officer issued Cleanup and Abatement Order No. R8-2000-0026 to Arauz. The Cleanup and Abatement Order required Arauz to remediate the Mead Valley site. Arauz did not undertake a cleanup of the site. Subsequently, the State Board approved \$36,000 from the State Cleanup and Abatement Account for contract services to remove and properly dispose of the illegally discharged manure from the site. Recovery of the \$36,000 is not part of the proposed action since it was not included in the ACL Complaint or the Board's 1999 action.

Board staff's attempts to collect the assessed amount from Arauz were not successful. Water Code Section 13328 provides that after the time for judicial review under Section 13330 has expired, the State Board may apply to the clerk for the appropriate court in the county in which the civil liability or penalty was imposed, for a judgment to collect the civil liability or penalty. The application must include a certified copy of the "action" of the Board. Other courts have accepted a copy of the meeting minutes in similar situations, but in this case the court required an order. If the Board adopts this order, the Attorney General or other representative of the Board can have the court enter a judgment on the administrative civil liability. Once a judgment is recorded, the Attorney General can bring collection proceedings.

RECOMMENDATION

Staff recommends that the Board adopt Order No. R8-2007-0048.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2007-0048
)	for
Memo Arauz (also known as)	Administrative Civil Liability
Erasmo Arauz) and Rafaela Aruz)	
Db a Arauz Trucking Company)	
10661 Limonite Avenue)	
Mira Loma, CA 91752)	

The California Regional Water Quality Control Board, Santa Ana Region (Board), held a hearing on November 19, 1999 to receive testimony and take evidence on the allegations contained in Complaint No. 99-0085, dated October 26, 1999 (Complaint). The Complaint proposed administrative civil liability of \$75,000. At the hearing, the Board assessed administrative civil liability pursuant to Water Code Section 13261 in the amount of \$99,000. Although the Board did not adopt a separate order memorializing its action, the meeting minutes and the verbatim transcript of the hearing document the assessment of this liability. On June 29, 2007, the Board conducted another hearing to affirm the action taken by the Board at its November 19, 1999 meeting.

Water Code Section 13261 provides that any person failing to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly. On December 21, 1994, Rafaela Arauz of Arauz Trucking was notified by certified mail, article number Z 773 131 817, of the responsibility and liability of manure haulers for the disposal of manure to land, pursuant to Water Code Section 13260. Rafaela Arauz was notified that any person discharging manure to land after receipt of that notification is subject to the issuance of a civil liability complaint or a criminal action in accordance with Water Code Section 13261.

1. At the November 19, 1999 evidentiary hearing, the Board found:
 - a. On October 13, 1999, Regional Board staff conducted an investigation of the property at 22260 Kinney Street, Mead Valley.
 - b. The property located at 22260 Kinney Street was found to be a residential lot of approximately 2.5 acres. The residence is located on the south-west portion of the property. The property is bounded on the south by a dirt access road (Kinney St.), on the east by open terrain consisting of low relief granitic rocks with erosional soils, on the north by a first order dry stream channel, striking in an east-west direction, tributary to the San Jacinto River, and on the west by a residential lot of approximately 2.5 acres. The property at

22260 Kinney Street did not appear to be cultivated for the growing of crops.

- c. On October 13, 1999, Regional Board staff observed a manure hauling truck entering the property at 22260 Kinney Street. The hauling truck was a double trailer gondola type carrier. Each trailer appeared to be carrying a full load of manure. After entering the property, the truck stopped and proceeded to dump the manure. Regional Board staff entered the property and advised the driver not to dump the load of manure. The driver was further advised that disposal of manure in this manner was illegal. The driver complied with Regional Board staff's request, but a portion of the manure was dumped from the trailers. The company name on the door panel of the cab truck was "ARAUZ TRUCKING". Regional Board staff questioned the driver of the truck as to who he was working for. His response was that he was working for "ARAUZ TRUCKING".
 - d. The manure applied on the central portion of the property was estimated to be about six inches thick. The manure that was pushed toward the northern section of the property into the dry stream channel was estimated to be about five to six feet deep. Regional Board staff received information that the discharge of manure at the property began approximately two months before the Complaint was issued. Some of these discharges were to a dry channel, a tributary to the San Jacinto River. By the time Board staff discovered the illegal operations and stopped it, Arauz had deposited approximately 1,500 tons of manure at the site.
2. Water Code Section 13327 specifies factors that the Board shall consider in establishing an amount of civil liability, including prior history of violations. Arauz had a history of violations including two Cleanup and Abatement orders. These and other factors were considered by the Board in establishing the amount of civil liability. After consideration of the evidence and the factors in Section 13327, the Board assessed civil liability of \$99,000, of which \$50,000 was suspended with a provision that the manure be removed from the illegal disposal site by December 1, 1999.
 3. Arauz did not remove the manure from the site by December 1, 1999.
 4. The Board's efforts to collect the assessed amount from Arauz were not successful. Water Code Section 13328 requires a court clerk to enter judgment based on a final ACL order. The statute requires a certified copy of the Board's "action." The court would not enter judgment based on the minutes, and required a certified order. This Order is needed to facilitate further collection efforts. This Order memorializes the action taken by the Board at the November 19, 1999 Board meeting.

7. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13261(b) and the Board's action on November 19, 1999, the Board affirms its imposition of an administrative civil liability on Memo (also known as Erasmo) and Rafaela Arauz, dba Arauz Trucking Company, in the amount of \$99,000. This amount shall be payable as set forth below.

1. Memo and Rafaela Arauz shall pay \$99,000 to the State Water Resources Control Board by July 30, 2007.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, Arauz may petition the State Water Resources Control Board for review of this Order. If Arauz chooses to do so, Arauz must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on June 29, 2007.

Gerard J. Thibeault
Executive Officer

Minutes of the November 19, 1999 meeting
City Council Chambers
25541 Barton Road
Loma Linda

1. Chair Stein called the meeting to order at 9:15 a.m.

Board Members Present

Board Members Absent

Karen Stein, Chair
John Withers, Vice-Chair
Evelyn Hart
Rodger Siems
Melody Henriques

Staff Members Present

Gerard J. Thibeault, Executive Officer
Kurt V. Berchtold, Assistant Executive Officer
Joanne E. Schneider, Environmental Program Manager
Karen Y. White, Executive Assistant
Robert L. Holub, Supervising Water Resource Control Engineer
Mark G. Adelson, Chief, Surveillance and Enforcement Section
Hope A. Smythe, Chief, Planning Section
Mark Smythe, Environmental Specialist III, Stormwater Section
Athar Khan, Sanitary Engineering Associate, Dairies and Chino Basin Section
Ed Kashak, Engineering Geologist, Dairies and Chino Basin Section

Legal Counsel

Ted Cobb

Public Attendance

Rod Cruze, City of Riverside
Pat Kilroy, City of Lake Elsinore
Joe Zoba, Yucaipa Valley Water District
Robert Marshall, The Irvine Company
Alan Swanson, John T. Tettemer and Assoc., Inc.
Yvonne Elliott, City of Ontario
Ward Auebach, County of Orange
Ken Parry, Redlands
Anne Thomas, Best, Best, and Krieger
Mary Blake, Alliance to Rescue Crystal Cove
Garry Brown, Orange County Coastkeeper
Robert Fraser, Santa Ana

3. Approval of minutes of the Regular Meeting of October 7, 1999

There being no additions or corrections, the minutes of the regular board meeting held on October 7, 1999, were approved, as presented.

4. Consideration of Consent Calendar Items

New Waste Discharge Requirements for Pine Knot Landing, LLC, Marina
Expansion Dredge and Fill Project, City of Big Bear Lake, San Bernardino County
Order No. 99-3

Rescission of Waste Discharge Requirements for Specific Facilities in San
Bernardino, Orange and Riverside Counties Order No. 99-84

	<u>Order No.</u>	<u>Discharger</u>	<u>County</u>
1.	94-5	Caltrans Districts 8 and 12	San Bernardino Orange
2.	99-2	Andrew Stellingwerf, Ontario	San Bernardino
3.	97-78	Daytona Car Wash, Corona	Riverside
4.	82-159	Cardoza Family Dairy, Corona	Riverside
5.	84-130	Techalloy Company, Perris	Riverside
6.	86-60	Rube Tucker Land Co., Perris	Riverside

Renewal of Waste Discharge Requirements for Industrial Waste Utilization,
Montclair, San Bernardino County (NPDES No. CA 8000127)
Order No. 99-68

Revised Cleanup and Abatement Order for San Bernardino County Waste System
Division, Mid-Valley Sanitary Landfill, San Bernardino County
(with errata sheet) Order No. 99-86

Cease and Desist Order for Yucaipa Valley Water District
Cease and Desist Order No. 99-66

Newport Bay Watershed Sediment Total Maximum Daily Load (TMDL) (with
errata sheet) Monitoring and Reporting Program No. 99-74

Action: It was moved by Board Member Siems, seconded by Board
Member Henriques and unanimously carried to adopt Orders No.

99-3, 99-84, 99-68, 99-86, and 99-66, and Monitoring and Reporting Program No. 99-74, as presented.

11. Revised Cease and Desist Order for Concentrated Animal Feeding Operations (Dairies and Related Facilities) within the Santa Ana Region
Order No. 99-76

Chair Stein announced that this item had been postponed to a subsequent Board meeting.

12. Administrative Civil Liability Complaint for Arauz Trucking – Administrative Civil Liability Complaint No. 99-85

Information pertaining to this item is contained in a verbatim transcript.

Chair Stein opened the hearing by reading the Chair's statement.

Robert Holub, Supervising Water Resource Control Engineer, presented the staff report.

Comments were provided by:

Pat Kilroy, City of Lake Elsinore

Action: It was moved by Board Member Hart, seconded by Board Member Withers, and unanimously carried to affirm the assessment of \$99,000, but suspend the amount of \$50,000 provided that all manure at the site be removed by December 1, 1999.

13. Administrative Civil Liability Complaint for River Ranch Recycling and Organics – Administrative Civil Liability Complaint No. 99-83

Executive Officer Thibeault noted that the discharger had waived the right to a hearing and paid the civil liability assessment of \$2,000.00. Therefore, no further action is required by the Regional Board.

14. Crystal Cove Status Report

Information pertaining to this item is contained in a verbatim transcript.

Environmental Program Manager Schneider presented the staff report.

Comments were provided by:

Roberta Marshall, The Irvine Company
Dr. Richard Ford, Scientific Consultant, The Irvine Company
Garry Brown, Member of Orange County Coastkeeper
Mary Blake, Member, Alliance to Rescue Crystal Cove

Anne Thomas, Best, Best, and Krieger
George Hrebian, Member, Alliance to Rescue Crystal Cove

15. Basin Plan Amendment Workshop – Resolution No. 99-82

Chair Stein announced that this item had been postponed to a subsequent Board meeting.

16. Mill Creek Prohibition

The Regional Board accepted the report as submitted.

17. Y2K Status Report

Assistant Executive Officer Berchtold summarized the staff report and answered questions from the Regional Board.

18. General Permits

Executive Officer Thibeault announced that the list of new permittees would be updated and submitted for Regional Board review at the January 7, 2000 meeting.

19. Hazardous Waste and Sewage Spill Incident Report

The Regional Board accepted the report as submitted.

20. Election of Board Officers and Appointment of Board Committees for 2000 (action item)

Board Member Hart nominated Board Member Withers as Chair of the Regional Board for 2000.

Board Member Siems nominated Board Member Henriques as Vice-Chair of the Regional Board for 2000.

The Regional Board unanimously accepted the nominees as recommended. The Regional Board also appointed Board Members Withers, Henriques, and Siems, as a Standing Committee of the Regional Board.

21. Board Meeting Dates and Locations for 2000

The Regional Board agreed to accept the list of Meeting Dates and Locations, as presented.

22. Executive Officer's Report (information item)

Executive Officer Thibeault answered questions related to the written report.

23. Board Member Communications

Board Member Hart requested that Board Members be appointed to attend the Newport Bay Watershed Executive Committee and the Southern California Wetlands Recovery Project Board of Governors.

24. ADJOURNMENT

Chair Stein adjourned the meeting at 11:25 a.m., to the regular meeting of January 7, 2000, at the City Council Chambers of Loma Linda.

Respectfully submitted:

GERARD J. THIBEAULT
Executive Officer

/kyw

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

MEMO & RAFAELA ARAUZ)	COMPLAINT NO. 99-85
dba ARAUZ TRUCKING)	FOR
10661 LIMONITE AVE.)	ADMINISTRATIVE CIVIL LIABILITY
MIRA LOMA, CALIFORNIA, 91752)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. On October 12, 1999, Regional Board staff received a complaint of manure discharge occurring on the residential property located at 22260 Kinney Street, Mead Valley, Riverside County.
2. On October 13, 1999, Regional Board staff responded to the complaint by conducting an investigation at the property of 22260 Kinney Street, Mead Valley.
3. The property located at 22260 Kinney Street was found to be a residential lot of approximately 2.5 acres. The residence is located on the south-west portion of the property. The property is bounded on the south by a dirt access road (Kinney St.), on the east by open terrain consisting of low relief granitic rocks with erosional soils, on the north by a first order dry stream channel, striking in an east-west direction, tributary to the San Jacinto River, and on the west by a residential lot of approximately 2.5 acres. The property at 22260 Kinney Street did not appear to be cultivated for the growing of crops.
4. On October 13, 1999, Regional Board staff observed a manure hauling truck entering the property at 22260 Kinney Street. The hauling truck was a double trailer gondola type carrier. Each trailer appeared to be carrying a full load of manure. After entering the property, the truck stopped and proceeded to dump the manure. Regional Board staff entered the property and advised the driver not to dump the load of manure. The driver was further advised that disposal of manure in this manner was illegal. The driver complied with Regional Board staff's request, but a portion of the manure was dumped from the trailers. The company name on the door panel of the cab truck was "ARAUZ TRUCKING". Regional Board staff questioned the driver of the truck as to who he was working for. His response was that he was working for "ARAUZ TRUCKING".
5. The manure applied on the central portion of the property was estimated to be about six inches thick. The manure that was pushed toward the northern section of the property into the dry stream channel was estimated to be about five to six feet deep. Regional Board staff received information that the discharge of manure at the property began approximately two months prior to this complaint. It is estimated that approximately 100 truck loads, or an approximate equivalent of 1000 tons of manure, have been discharged.

6. On October 14 and 15, 1999, Regional Board staff attempted to contact Memo and Rafaela Arauz to discuss the discharge of manure. Regional Board staff left information regarding this incident on the voice mail of Memo and Rafaela Arauz and requested that they contact Regional Board staff regarding this matter. Staff has not yet been contacted by Memo or Rafaela Arauz.
7. In accordance with Section 13260 of the Water Code, any person discharging waste, or proposing to discharge waste, is required to submit a report of the waste discharge to the Regional Board. Any person failing to submit such a report of waste discharge is subject to administrative civil liability up to \$1,000 for each day the violation occurs.
8. On December 21, 1994, Rafaela Arauz of Arauz Trucking was notified by certified mail, article number Z 773 131 817, of the responsibility and liability of manure haulers for the disposal of manure to land, pursuant to Water Code Section 13260. Rafaela Arauz was notified that any person discharging manure to land after receipt of that notification is subject to the issuance of a civil liability complaint or a criminal action in accordance with Water Code Section 13261.
9. Beginning about August 13, 1999, you are alleged to have discharged manure to land in violation of Water Code Section 13260. The disposal of any amount of manure to land is considered a discharge of waste.
10. Water Code Section 13261 subdivision (a) states: " Any person failing to furnish a report or pay a fee under Section 13260 when so requested by a Regional Board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)".
11. Water Code Section 13261 states in subdivision (b) (1), "Civil liability may be administratively imposed by a Regional Board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs".
12. The maximum amount of liability which the Regional Board could assess administratively under Section 13261(b)(1) for discharge of manure to land from August 13, 1999 to October 26, 1999 is \$75,000.
13. The Executive Officer proposes that administrative civil liability be imposed in the amount of \$75,000. The Executive Officer further proposes that \$50,000 of this amount be suspended, provided that:
 - a. By **December 1, 1999**, The Arauz Trucking Company removes the manure from the residential property described in finding 3 of this complaint, to the satisfaction of the Executive Officer.

- b. By **December 8, 1999**, The Arauz Trucking Company submits to the Regional Board a report certifying that the manure has been removed, the amount of manure removed, and its final destination.
- 14. If the terms of the conditional suspension are not met, then Arauz Trucking Company shall submit a check for the suspended portion of the civil liability in the amount of \$50,000 within 30 days following notification by the Executive Officer that the terms of the suspension have not been met.

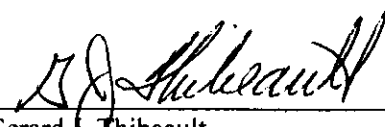
WAIVER OF THE HEARING

You may waive the right to a hearing. If you waive your right to a hearing, please sign the attached waiver and return it together with a cashiers check made payable to the State Water Resources Control Board in the amount of \$25,000. Send the check and waiver to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, Ca 92501-3339

If you have any questions regarding this complaint please contact, Gerard J. Thibeault at (909) 782-3284, Robert Holub at (909) 782 3298 or contact the Regional Board's staff counsel, Ted Cobb, at (916) 657-0406.

Date: 10/26/99


Gerard J. Thibeault
Executive Officer